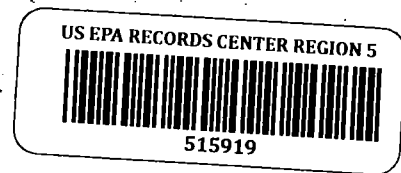


09 APR 1985



MEMORANDUM

SUBJECT: Reilly Tar/Federal Decision Upholding CERCLA
Constitutionality

FROM: Robert Leininger & Elizabeth Maxwell

TO: All Region V Attorneys

DATE: April 8, 1985

On April 5, 1985 Judge Paul Magnuson issued an order denying Reilly Tar's Motion for Preliminary Injunction. The motion, filed on March 5 in the federal district of Minnesota sought to enjoin the United States from assessing daily penalties or treble damages for Reilly's failure to comply with an Administrative Order issued under Section 106 of CERCLA.

In support of its motion, Reilly alleged that the assessment of treble damages and statutory penalties under Section 9607(c)(3) of Superfund violated the company's constitutional right to due process. This is the same argument raised in the Aminoil case. (Aminoil, Inc. v. U.S. EPA, 599 F.Supp. 69 (C.D. Cal. 1984)). As you may know, the court in Aminoil held that such provision of Superfund is unconstitutional.

The United States argued in opposition to the motion that CERCLA is constitutional because Section 9607(c)(3) states that the court may impose treble damages against those who do not have sufficient cause to not comply with a Section 106 Order. Consequently, a person may not be liable for such punitive damages if it had a good faith defense to the validity of the Order, and, therefore, due process is not violated.

In ruling in favor of the United States, the court followed the reasoning set forth in the government's brief and specifically disagreed with the holding set forth in Aminoil.